

EXECUTIVE SUMMARY

PURPOSE

The purpose of this study is to assess the trends and problems associated with the Peer Review Organizations' use of their sanction referral authority.

BACKGROUND

Since their establishment in 1982, the Peer Review Organizations (PROs) have reviewed millions of inpatient medical records to confirm the necessity, quality, and appropriateness of care rendered to Medicare beneficiaries. One controversial aspect of the PROs' responsibilities has been their sanction referral authority, which requires them to recommend that the Office of Inspector General (OIG) sanction physicians and hospitals responsible for violating their Medicare obligations, as specified in section 1156(a) of the Social Security Act. If the OIG accepts a PRO's recommendation, it can sanction physicians and hospitals by excluding them from participating in Medicare and all State health care programs or by imposing a monetary penalty.

In this report, we provide an update on the extent to which the PROs have been using that authority and the difficulties they experience with it. We offer three options for policymakers to consider. We reviewed the PRO sanction referral data for FYs 1986 through 1992 and interviewed representatives of 10 PROs. Among those 10 were PROs that, during Fiscal Years 1990 and 1991, had made at least 1 referral leading to a sanction, PROs that had made referrals that were rejected by the OIG, and PROs that had made no referrals.

FINDINGS

PRO sanction referrals have dwindled.

- ▶ PRO sanction referrals to the OIG have fallen from a high of 72 in FY 1987 to a low of 12 in FY 1991 and 14 in FY 1992.
- ▶ PROs for seven States have never referred a physician or hospital for sanction. Twenty-three of the 43 PROs have referred no physician or hospital for sanction in FYs 1991 and 1992.
- ▶ OIG sanctions based on PRO referrals have fallen from a high of 50 in FY 1987 to a low of 6 in FY 1992. Only 1 monetary penalty has been imposed since FY 1988.

Three major factors account for the drop in sanction referrals.

- ▶ The statutory unwilling or unable requirement remains a significant barrier to sanction referrals. This requirement stipulates that even where physicians or hospitals have violated Medicare obligations, they cannot be sanctioned unless they have demonstrated an "unwillingness or lack of ability" to comply with those obligations.
- ▶ The PROs' negative experiences with the sanction process deter referrals. They see the process as costly, complex, and contentious, and are unsure that their recommendations will be upheld.
- ▶ The PROs see themselves increasingly as educators in addressing quality-of-care problems.

Despite dwindling referrals, all the PRO officials we interviewed believe that the sanction referral authority is important to achieving their mission because it gives them leverage with the medical community.

POLICY OPTIONS

Given our findings and the moribund state of the PROs' sanction referral authority, we believe the authority needs reexamining. In that light, we offer three options for consideration by the Department of Health and Human Services, the Congress, interest groups, and other concerned parties. The options are not mutually exclusive. Any of the three could be adopted separately, but in combination they could substantially strengthen protection for Medicare beneficiaries under the PRO program.

- ▶ *Repeal or substantially modify the unwilling or unable requirement.*
- ▶ *Increase the monetary penalty sanction substantially.*
- ▶ *Maintain PROs' sanction referral authority as it exists now, but mandate referrals to State medical boards when PROs confirm serious quality-of-care problems.*

COMMENTS

We received comments on the draft report from the Health Care Financing Administration (HCFA), Public Health Service (PHS), and Assistant Secretary for Planning and Evaluation (ASPE) within the Department. The American Medical Association (AMA), American Medical Peer Review Association (AMPRA), and American Association of Retired Persons (AARP) also provided comments. The full text of the comments and our responses to each appear in appendix C.

The HCFA and AMA oppose changes in the unwilling and unable requirement, while PHS, AMPRA, and AARP support its repeal or modification. The HCFA, PHS,

ASPE, AMPRA, and AARP support increases in the monetary penalty, while the AMA opposes it.

With regard to the third policy option, HCFA indicates it will consider this option in its development of regulations that govern the sharing of confidential information between PROs and State medical boards. The PHS sees merit in requiring PROs to report serious quality-of-care cases to State medical boards, but cautions that this option could require that State boards add to their investigatory and monitoring capacity. The ASPE does not support this proposal, citing the pending fourth scope of work, and a potential for parallel investigation by PROs and medical boards. The AMA supports this option conceptually for "serious quality-of-care problems that have been confirmed by the PRO following specialty-specific physician review and completion of due process rights at the PRO level." The AMPRA and AARP support mandating referrals to State medical boards when PROs confirm serious quality-of-care problems.

Each of the respondents, both within the Department and from outside organizations, expressed concerns that two of the options proposed in the draft report could have negative consequences: Elimination of the sanction referral authority and providing that authority directly to the PROs. In response to their comments, we eliminated these policy options from the final report.